

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

MARTHA DE LA CARIDAD MOLINA,

Debtor.

CASE NO.: 19-40119-KKS
CHAPTER: 7

MARY W. COLON, Chapter 7 Trustee

ADV. NO.: 19-04034-KKS

Plaintiff,

v.

MARTHA DE LA CARIDAD MOLINA,

Defendant.

ORDER GRANTING IN PART, AND DENYING IN PART, *DEBTOR'S*
[SIC] MOTION FOR SUMMARY JUDGMENT (DOC. 33)

THIS CASE came before the Court on *Debtor's [Sic] Motion for Summary Judgment* ("Motion," Doc. 33), to which Plaintiff filed her Response.¹ For the reasons that follow, the Motion is due to be granted in part and denied, in part.

Plaintiff commenced this adversary proceeding on June 14, 2019, seeking a denial of Defendant's discharge pursuant to 11 U.S.C. §§

¹ *Plaintiff's Response to Debtor's Motion for Summary Judgment* ("Response") Doc. 37.

727(a)(2)(B), (a)(4)(A), and (a)(6)(A).² Defendant denies: 1) transferring an asset to her son; 2) making a transfer in an attempt to hinder, delay, or defraud creditors; and 3) knowingly or fraudulently making a false oath or account in connection with the case.³

The undisputed facts

Defendant filed her Chapter 7 petition on March 11, 2019.⁴ On her original Schedule A/B Defendant listed a 2018 tax refund in the amount of \$3,000, which she claimed as exempt on Schedule C.⁵ On July 10, 2019, Defendant amended her Schedules A/B and C to change the amount of her 2018 tax refund, claimed as exempt, to \$4,421.00.⁶ On her Statement of Financial Affairs, Defendant answered “No” to the following question: “Within 2 years before you filed for bankruptcy, did you give any gifts with a total value of more than \$600 per person?”⁷

² *Complaint for Denial of Discharge Under 11 U.S.C. § 727* (“Complaint”) Doc. 1.

³ *Debtor’s Response to Trustee’s Complaint for Denial of Discharge* (“Answer”) Doc. 11.

⁴ *In re Molina*, Case No. 19-40119-KKS, Doc. 1, *Voluntary Petition for Individuals Filing for Bankruptcy* (Bankr. N.D. Fla.).

⁵ *Id.* at pp. 13 and 17.

⁶ *In re Molina*, Case No. 19-40119-KKS, Doc. 22, pp. 4 and 8, *Amended Schedules A/B and C, and Declaration of Schedules* (Bankr. N.D. Fla.). Defendant filed her initial Petition and Schedules on March 11, but the date by her signature is February 8, 2019. *In re Molina*, Case No. 19-40119-KKS, Doc. 1, pp. 6, 7, 32, 39, 41, 47, and 48, *Voluntary Petition for Individuals Filing for Bankruptcy* (Bankr. N.D. Fla.).

⁷ *In re Molina*, Case No. 19-40119-KKS, Doc. 1, p. 36, *Voluntary Petition for Individuals Filing for Bankruptcy* (Bankr. N.D. Fla.).

At the § 341 Meeting, Defendant testified that she had not made any transfers of property to family members within four (4) years prior to filing her bankruptcy case.⁸ Defendant received her income tax refund before she filed bankruptcy.⁹ On February 26, 2019, thirteen (13) days before filing her petition, Defendant transferred \$4,000.00 from her refund to her adult son.¹⁰ Defendant's son used this money to pay for eye surgery performed on May 23, 2019.¹¹ Defendant did not disclose the transfer of \$4,000 to her son on her Schedules, Statement of Financial Affairs, Amended Schedules or in her testimony at her § 341 Meeting.

Summary Judgment Standard

Summary judgment is governed by Fed. R. Civ. P. 56, made applicable by Fed. R. Bankr. P. 7056. The Court may grant summary judgment if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.¹² The moving party bears the initial burden of establishing that "there are no genuine issues of material fact that should be decided at trial."¹³ Once the initial burden is

⁸ Doc. 33, p. 15.

⁹ *Id.*

¹⁰ *Id.* at p. 20.

¹¹ *Id.* at pp. 12 and 20.

¹² Fed. R. Civ. P. 56(c) as made applicable by Fed. R. Bankr. P. 7056.

¹³ *SunTrust Bank v. Mitchell (In re Mitchell)*, 496 B.R. 625, 631 (Bankr. N.D. Fla. 2013) (citing *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 606 (11th Cir. 1991)).

satisfied, “the nonmoving party must ‘go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.’”¹⁴

“Facts are material if they ‘might affect the outcome of the suit under the governing law’ and disputes over material facts are genuine if ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’”¹⁵ If an issue remains as to a defendant’s intent, “objections to discharge generally cannot be resolved at the summary judgment stage.”¹⁶

Defendant argues that summary judgment is appropriate because: 1) she claims that as a native Spanish speaker she misunderstood the intent of Plaintiff’s question at the § 341 Meeting, even though she was speaking through a translator; 2) she believed her transfer of \$4,000 to her son was not a gift or other transfer of property, but rather payment for an essential expense; and 3) that because she claimed the tax refund as exempt, her failure to report the transfer to her son was immaterial.

¹⁴ *Id.* (citing *Hines v. Marchetti*, 436 B.R. 159, 164 (M.D. Ala. 2010)).

¹⁵ *Bender v. James (In re Hintze)*, 525 B.R. 780, 784 (Bankr. N.D. Fla. 2015) (citing *FindWhat Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011)).

¹⁶ *Mitchell*, 496 B.R. at 630 (citing *In re Hines*, 418 B.R. 393, 404 (Bankr. M.D. Ala. 2009)).

Defendant is entitled to summary judgment as to § 727(a)(2)(B)

Plaintiff seeks denial of Defendant's discharge pursuant to 11 U.S.C. § 727(a)(2)(B), which provides that a discharge will be entered unless:

the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed – . . . (B) property of the estate, after the date of the filing of the petition.¹⁷

Section 727(a)(2)(B) does not apply here because the transfer at issue—Defendant's gift of \$4,000.00 to her son—occurred pre-petition. For that reason, Defendant is entitled to summary judgment in her favor on denial of discharge based on Section 727(a)(2)(B).

Defendant is not entitled to summary judgment as to § 727(a)(4)(A) because a genuine issue of material fact remains.

Plaintiff also seeks a denial of Defendant's discharge pursuant to 11 U.S.C. § 727(a)(4)(A); under this section, a discharge shall be granted unless "the debtor knowingly and fraudulently, in or in connection with the case – (A) made a false oath or account."¹⁸ Courts, including this one,

¹⁷ 11 U.S.C. § 727(a)(2)(B) (2020).

¹⁸ 11 U.S.C. § 727(a)(4)(A) (2020).

have held that omissions or false statements on a debtor's Schedules or Statement of Financial Affairs can constitute a false oath under § 727(a)(4)(A) sufficient to warrant a denial of discharge.¹⁹

In her affidavit in support of the Motion, Defendant avows: "I did not understand that paying for my dependent, live-in son's eye surgery would have been considered to be a 'transfer of property' If I had understood that, then I would have replied 'yes.' I understood the \$4,000 as paying for an essential expense of my dependent."²⁰

In *In re Mitchell*, this Court held that in order to succeed in an action under § 727(a)(4), Plaintiff must prove by a preponderance of the evidence that: "(1) the debtor made a false statement under oath; (2) the debtor knew the statement was false; (3) the statement was material to the bankruptcy case; and (4) the debtor made the statement with fraudulent intent."²¹ The Eleventh Circuit Court of Appeals has said that a

¹⁹ *In re Chalik*, 748 F.2d 616, 618 (11th Cir. 1984); *In re Malave*, Adversary No. 6:18-ap-00063—KSJ, 2019 WL 259427, *2 (Bankr. M.D. Fla. Jan 17, 2019) (citing *In re Whitehill*, 514 B.R. 687, 692 (Bankr. M.D. Fla. 2014)); and *SunTrust v. Mitchell (In re Mitchell)*, 496 B.R. 625, 632 (Bankr. N.D. Fla. 2013).

²⁰ Doc. 33, pp. 15-16.

²¹ *SunTrust v. Mitchell (In re Mitchell)*, 496 B.R. 625, 631-32 (Bankr. N.D. Fla. 2013) (citing *In re Eigsti*, 323 B.R. 778, 783-84 (Bankr. M.D. Fla. 2005)).

statement is material “if it bears a relationship to the bankrupt’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence or disposition of his property.”²²

Three of the four *Mitchell* requirements are met in this case. Defendant made a false statement under oath at her § 341 Meeting of creditors. She also made false statements in her original and Amended Schedules and Statement of Financial Affairs by failing to disclose the transfer to her son and listing her 2018 tax refund as an asset, knowing full well that she had received and disposed of the refund pre-petition. Defendant does not address her false statements about her income tax refund in her original and Amended Schedules, other than to continue to urge that because the refund was allegedly exempt, there was no harm, no foul when she spent the refund on her son. As to Defendant’s testimony at the § 341 Meeting, although Plaintiff maintains that Defendant should have understood the question about transfers during the four years pre-petition because she had a translator, Defendant’s affidavit testimony raises issues of material fact as whether Defendant knew her statement was false, and whether she made the statement with fraudulent intent.

²² *In re Chalik*, 748 F.2d 616, 618 (11th Cir. 1984) (citing *In re Steiker*, 380 F.2d 765, 768 (3d Cir. 1967)).

For these reasons, genuine issues of material fact remain for trial; Defendant is not entitled to summary judgment as to § 727(a)(4)(A).

Defendant is entitled to summary judgment as to § 727(a)(6)(A).

Plaintiff also seeks denial of Defendant's discharge pursuant to 11 U.S.C. § 727(a)(6)(A), which provides that a discharge shall be granted unless "the debtor has refused, in the case – (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify."²³

Plaintiff has not alleged that this Court entered any order that Defendant failed or refused to obey. For that reason, there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law on Plaintiff's claim under § 727(a)(6)(A).

For the reasons stated, it is

ORDERED:

1. *Debtor's Motion for Summary Judgment* (Doc. 33) is GRANTED as to Plaintiff's claims under 11 U.S.C. §§ 727(a)(2)(B) and (a)(6)(A).

²³ 11 U.S.C. § 727(a)(6)(A) (2020).

2. *Debtor's Motion for Summary Judgment* (Doc. 33) is DENIED as to Plaintiff's claims under 11 U.S.C. § 727(a)(4)(A).

3. The hearing on the Motion, currently scheduled for June 30, 2020, is CANCELED; the Court will instead conduct a pre-trial hearing so the parties can advise the Court:

- a. Whether they are ready for trial, currently scheduled on July 21, 2020, beginning at 1:00 p.m. EST, in the bankruptcy courtroom in Tallahassee, Florida;
- b. Whether they believe trial will take the three (3) hours the Court currently has set aside; and
- c. To discuss any other pretrial issues that may remain.

DONE and ORDERED on June 26, 2020.



KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

Counsel for Defendant is directed to serve a copy of this Order on interested parties and file a certificate of service within three (3) days of entry of this Order.